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In the Supreme Court of the United States

MATCH-E-BE-NASH-SHE-WISH BAND OF POTTAWATOMI INDIANS, PETITIONER

v.

DAVID PATCHAK, ET AL.

KEN L. SALAZAR, SECRETARY OF THE INTERIOR, ET AL., PETITIONERS

v.

DAVID PATCHAK, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR THE FEDERAL PETITIONERS

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QUESTIONS PRESENTED

1. Whether 5 U.S.C. 702 waives the sovereign immunity of the United States from a suit challenging its title to lands that it holds in trust for an Indian tribe.

2. Whether a private individual who alleges injuries resulting from the operation of a gaming facility on Indian trust land has prudential standing to challenge the decision of the Secretary of the Interior to take title to that land in trust, on the ground that the decision was not authorized by the Indian Reorganization Act, ch. 576, 48 Stat. 984.

PARTIES TO THE PROCEEDINGS

In No. 11-246, the petitioner is the Match-E-Be-Nash-She-Wish Band of Pottawatomi Indians, intervenor-defendant below. The respondents are David Patchak, plaintiff below, and Ken L. Salazar, Secretary of the Interior, and Larry Echo Hawk, Assistant Secretary of the Interior, Indian Affairs, defendants below.

In No. 11-247, the petitioners are Ken L. Salazar, Secretary of the Interior, and Larry Echo Hawk, Assistant Secretary of the Interior, Indian Affairs, defendants below. The respondents are David Patchak, plaintiff below, and the Match-E-Be-Nash-She-Wish Band of Pottawatomi Indians, intervenor-defendant below.

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No. 11-246

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-22a) is reported at 632 F.3d 702.* The opinion of the district court (Pet. App. 27a-37a) is reported at 646 F. Supp. 2d 72.

* All references to "Pet. App." are to the appendix in No. 11-247.

JURISDICTION

The judgment of the court of appeals was entered on January 21, 2011. Petitions for rehearing were denied on March 28, 2011 (Pet. App. 23a-24a, 25a-26a). On June 15, 2011, the Chief Justice extended the time within which to file a petition for a writ of certiorari in No. 11-246 to and including July 26, 2011, and on July 18, 2011, the Chief Justice further extended the time to August 25, 2011. On June 16, 2011, the Chief Justice extended the time within which to file a petition for a writ of certiorari in No. 11-247 to and including July 26, 2011, and on July 18, 2011, the Chief Justice further extended the time to August 25, 2011. The petitions for a writ of certiorari were filed on August 25, 2011, and granted on December 12, 2011. The jurisdiction of this Court rests on 28 U.S.C. 1254(1).

STATUTORY PROVISIONS INVOLVED

Pertinent statutory provisions are set forth in an appendix to this brief. App., *infra*, 1a-6a.

STATEMENT

1. The Match-E-Be-Nash-She-Wish Band of Pottawatomi Indians (the Band), also called the Gun Lake Band, is a federally recognized tribe in Allegan County, Michigan. See 75 Fed. Reg. 60,810, 60,811 (Oct. 1, 2010). Under the terms of the 1821 Treaty of Chicago, signed by Chief Match-E-Be-Nash-She-Wish, the Band ceded much of its land to the United States but reserved a tract of land at present-day Kalamazoo. Treaty of Chicago, 7 Stat. 219. In 1827, the Band ceded that parcel to the United States in exchange for the enlargement of one of the reserves of the Pottawatomi bands. Treaty of Sept. 19, 1827, 7 Stat. 305. Under subsequent treaties to

which the Band was not a signatory, all Pottawatomi land was ceded to the United States, leaving the Band landless. Treaty of Chicago, 7 Stat. 431 (1833); Ottawa Treaty, 7 Stat. 513 (1836).

In 1998, the Secretary of the Interior formally acknowledged the Band as a recognized tribe. 63 Fed. Reg. 56,936 (Oct. 23, 1998). In 2001, the Band submitted an application to the Department of the Interior in which it requested that the United States acquire in trust for the Band about 147 acres of land in Wayland Township, Michigan (the Bradley Property). Pet. App. 28a-29a. Its application was based on the Indian Reorganization Act (IRA), ch. 576, 48 Stat. 984, which authorizes the Secretary of the Interior to acquire an interest in land "for the purpose of providing land for Indians." 25 U.S.C. 465. Under Section 465, title to any lands or rights acquired pursuant to the IRA is "taken in the name of the United States in trust for the Indian tribe or individual Indian for which the land is acquired, and such lands or rights shall be exempt from State or local taxation." *Ibid.*

In May 2005, after an extensive administrative review, Secretary Norton announced her decision to acquire the Bradley Property in trust for the Band. 70 Fed. Reg. 25,596-25,597 (May 13, 2005). The announcement stated that "acceptance of the land into trust" would not occur for 30 days, so that "interested parties [would have] the opportunity to seek judicial review of the final administrative decisions to take land in trust for Indian tribes and individual Indians before transfer of title to the property occurs." *Ibid.*; see 25 C.F.R. 151.12(b).

2. During that 30-day period, an organization known as Michigan Gambling Opposition (MichGO) sued the

Secretary, alleging that her decision violated the Indian Gaming Regulatory Act (IGRA), 25 U.S.C. 2701 *et seq.*, as well as the National Environmental Policy Act of 1969, 42 U.S.C. 4321 *et seq.*, and that 25 U.S.C. 465 is an unconstitutional delegation of legislative authority to the Executive. The district court rejected those claims. *Michigan Gambling Opposition (MichGO)* v. *Norton*, 477 F. Supp. 2d 1 (D.D.C. 2007).

MichGO appealed, and after oral argument, it attempted to add a claim that the land acquisition was not authorized under 25 U.S.C. 465 because, according to MichGO, the Gun Lake Band was not under federal jurisdiction in 1934. See *Carcieri* v. *Salazar*, 555 U.S. 379, 382 (2009) (holding that the IRA "limits the Secretary's authority to taking land into trust for the purpose of providing land to members of a tribe that was under federal jurisdiction when the IRA was enacted in June 1934"). The court of appeals denied MichGO's motion to supplement the issues on appeal, *Michigan Gambling Opposition* v. *Kempthorne*, No. 07-5092 (D.C. Cir. Mar. 19, 2008), and then affirmed the district court's decision, *Michigan Gambling Opposition* v. *Kempthorne*, 525 F.3d 23 (D.C. Cir. 2008), cert. denied, 555 U.S. 1137 (2009).

3. Respondent Patchak lives in Wayland Township, Michigan, "in close proximity to" the Bradley Property. J.A. 30. In 2008, a week after the court of appeals denied rehearing en banc in *Michigan Gambling Opposition*, and more than three years after MichGO filed its complaint, Patchak brought this action under the Administrative Procedure Act (APA), 5 U.S.C. 551 *et seq.*, advancing the argument that MichGO had attempted to raise in its appeal—*i.e.*, that the acquisition was not authorized by the IRA because the Band was not under

federal jurisdiction in 1934. At the time Patchak filed his suit, title to the land had not yet been transferred to the United States in trust for the Band. When Secretary Kempthorne announced that he intended to accept the land in trust for the Band once the court of appeals issued its mandate in *Michigan Gambling Opposition*, Patchak requested that the district court order an "administrative stay of proceedings," which the district court denied. C.A. App. 64; J.A. 6-7. Patchak subsequently moved for a temporary restraining order prohibiting the trust acquisition, but the district court denied that motion as well. J.A. 11. On January 30, 2009, the Secretary accepted title to the Bradley Property in trust for the Band. Pet. App. 3a.

The district court dismissed Patchak's complaint. Pet. App. 27a-37a. The court held that Patchak lacked prudential standing because the injury he alleged—namely, that the gaming facility the Band proposed to operate "would detract from the quiet, family atmosphere of the surrounding rural area," *id.* at 30a n.5—was not arguably within the zone of interests protected by the IRA, *id.* at 34a-36a. The court stated that its subject-matter jurisdiction was "seriously in doubt" for the additional reason that the United States has not waived its sovereign immunity to suits challenging its title to Indian trust lands. *Id.* at 37a n.12.

4. The court of appeals reversed and remanded. Pet. App. 1a-22a. The court held that Patchak had prudential standing, reasoning that the IRA "limit[s] the Secretary's trust authority," and "[w]hen that limitation blocks Indian gaming, as Patchak claims it should have in this case, the interests of those in the surrounding community—or at least those who would suffer from living near a gambling operation—are arguably pro-

tected." *Id.* at 7a. The court explained that, in reaching that conclusion, it "ha[d] not * * * viewed the IRA provisions in isolation." *Id.* at 8a. Instead, because the court viewed those provisions as "linked" to IGRA, it evaluated Patchak's interests in light of the Band's intended use of the property for gaming. *Ibid.* "Taken together," the court concluded, "the limitations in [the IRA and IGRA] arguably protected Patchak from the negative effects of an Indian gambling facility." *Ibid.* (internal quotation marks omitted).

The court of appeals also held that Patchak was a "proper entity to police the Secretary's authority to take lands into trust under the IRA." Pet. App. 9a. The court reasoned that if the interests of a State or municipality—which might lose regulatory authority or tax revenue as a result of a trust acquisition—are within the zone of interests protected by the IRA, "then so are Patchak's interests," because his alleged injuries "may be different, but they are just as cognizable." *Id.* at 10a. The court stated that the injuries Patchak alleged, including loss of property value, loss of "the rural character of the area," and loss of "the enjoyment of the agricultural land surrounding the casino site," are the "sorts of injuries [that] have long been considered sufficient for purposes of standing." *Ibid.*

The court of appeals next held that 5 U.S.C. 702 waived the government's sovereign immunity from Patchak's suit. Pet. App. 10a-21a. Section 702 waives sovereign immunity for any "action in a court of the United States seeking relief other than money damages and stating a claim that an agency or an officer or employee thereof acted or failed to act in an official capacity or under color of legal authority." 5 U.S.C. 702. The government contended that Patchak's suit was barred

by the last sentence of Section 702, which provides that "[n]othing herein * * * confers authority to grant relief if any other statute that grants consent to suit expressly or impliedly forbids the relief which is sought." *Ibid.* The government argued that the Quiet Title Act (QTA), 28 U.S.C. 2409a, is such a statute. The QTA provides that the United States may be sued "to adjudicate a disputed title to real property in which the United States claims an interest," but it goes on to say that "[t]his section does not apply to trust or restricted Indian lands." 28 U.S.C. 2409a(a).

The court of appeals rejected the government's argument. Observing that "a common feature of quiet title actions is missing from this case" because Patchak was not claiming title to the land at issue, Pet. App. 14a, the court concluded that "the type of action contemplated in the Quiet Title Act does not encompass Patchak's lawsuit," *id.* at 16a. In so holding, the court acknowledged that its decision created a conflict with decisions of three other circuits. *Id.* at 18a (citing *Neighbors for Rational Development, Inc.* v. *Norton*, 379 F.3d 956 (10th Cir. 2004); *Metropolitan Water Dist.* v. *United States*, 830 F.2d 139 (9th Cir. 1987), aff'd by an equally divided Court *sub nom. California* v. *United States*, 490 U.S. 920 (1989); *Florida Dep't of Bus. Regulation* v. *United States Dep't of the Interior*, 768 F.2d 1248 (11th Cir. 1985), cert. denied, 475 U.S. 1011 (1986)).

SUMMARY OF ARGUMENT

This lawsuit should be dismissed for either of two independent reasons: first, the United States has not waived its sovereign immunity from suits, such as this one, challenging its title to Indian trust lands; and second, Patchak lacks prudential standing because the in-

jury he alleges is not within the zone of interests protected by the statutory provision on which he relies.

I. The United States is immune from suit in the absence of an express waiver of that immunity by Congress. In 1972, Congress enacted the Quiet Title Act to permit the United States to be sued "to adjudicate a disputed title to real property in which the United States claims an interest." 28 U.S.C. 2409a(a). That waiver of immunity, however, is accompanied by important limitations. It "does not apply to trust or restricted Indian lands," *ibid.*, and it makes relief available only to a plaintiff who claims some "right, title, or interest" in the property, 28 U.S.C. 2409a(d). Because this case involves land held by the United States in trust for an Indian tribe, and because Patchak does not himself claim any interest in the land at issue, the QTA does not permit this suit.

Patchak instead relies on the waiver of sovereign immunity provided in the 1976 amendments to the Administrative Procedure Act, 5 U.S.C. 702. By its terms, however, that provision does not "confer[] authority to grant relief if any other statute that grants consent to suit expressly or impliedly forbids the relief which is sought." *Ibid.* The QTA is just such a statute, and the APA's waiver of sovereign immunity is therefore inapplicable here. That conclusion is supported by the legislative history of the amendments to Section 702, which makes clear that, as then-Assistant Attorney General Scalia put it, "in most if not all cases where statutory remedies already exist, these remedies will be exclusive." S. Rep. No. 996, 94th Cong., 2d Sess. 27 (1976). And it is compelled by this Court's precedent establishing that "Congress intended the QTA to provide the exclusive means by which adverse claimants could chal-

lenge the United States' title to real property." *United States* v. *Mottaz*, 476 U.S. 834, 841 (1986) (quoting *Block* v. *North Dakota*, 461 U.S. 273, 286 (1983)).

The court of appeals believed that the limitations in the QTA are irrelevant here because Patchak does not seek to quiet title in himself. That is incorrect. Patchak seeks an order compelling the United States to relinquish the United States' trust title to the land at issue, and therefore "the relief which is sought," 5 U.S.C. 702, is exactly the relief that the QTA forbids. The court of appeals' analysis also fails to take account of the purposes of the QTA's "Indian lands" exception—the effect on tribal interests from an order compelling the divestiture of trust land would be no less simply because the order was issued at the behest of a plaintiff who did not himself claim an interest in the land. Nor is there any reason to believe that Congress intended to create a regime in which anyone except an adverse claimant is free to challenge the United States' title to trust lands by suing an officer of the United States under the APA. Such a regime would cause serious practical problems and would enable ready circumvention of the carefully crafted limits on the QTA's waiver of sovereign immunity.

II. The doctrine of prudential standing requires a plaintiff to show that "the injury he complains of * * * falls within the 'zone of interests' sought to be protected by the statutory provision whose violation forms the legal basis for his complaint." *Lujan* v. *National Wildlife Fed'n*, 497 U.S. 871, 883 (1990). In this case, that statutory provision is Section 5 of the Indian Reorganization Act, which authorizes the Secretary to acquire an interest in land "for the purpose of providing land for Indians." 25 U.S.C. 465. But that provision has nothing

to do with the interests asserted in Patchak's suit, which involve the effect of gaming—conducted under a different statute—on nearby landowners. Although State and local governments would have prudential standing to challenge a land acquisition because they can lose some taxing and regulatory authority when land is taken into trust, the State of Michigan and the relevant local governments have all supported the Secretary's action. Patchak apparently takes a different view, but his asserted interests are "so marginally related to or inconsistent with the purposes implicit in the statute that it cannot reasonably be assumed that Congress intended to permit the suit." *Clarke* v. *Securities Indus. Ass'n*, 479 U.S. 388, 399 (1987).

In reaching a contrary conclusion, the court of appeals erred by failing to limit its zone-of-interests analysis "to the particular provision of law upon which the plaintiff relies." *Bennett* v. *Spear*, 520 U.S. 154, 175-176 (1997). Instead, the court evaluated the interests protected by the Indian Gaming Regulatory Act, an entirely different statute enacted decades after the IRA, and it also looked to regulations that Patchak does not even seek to enforce.

The court of appeals further erred by conflating Article III and prudential-standing principles. Noting that a State has prudential standing to bring a suit alleging a violation of 25 U.S.C. 465, the court reasoned that Patchak's alleged injuries are "just as cognizable." Pet. App. 10a. But alleging a cognizable injury is a requirement of Article III standing; the zone-of-interests test imposes an additional requirement that Patchak has failed to satisfy in this case.

ARGUMENT

I. THE UNITED STATES HAS NOT WAIVED ITS SOVEREIGN IMMUNITY FROM SUITS CHALLENGING ITS TITLE TO INDIAN TRUST LANDS

In this suit, Patchak seeks an order reversing the Secretary's acquisition of the Bradley Property as Indian trust land. His suit challenges the United States' trust title to the property and, if successful, would divest the United States of that title. "The basic rule of federal sovereign immunity," however, "is that the United States cannot be sued at all without the consent of Congress." *Block* v. *North Dakota*, 461 U.S. 273, 287 (1983). Because neither the Quiet Title Act, 28 U.S.C. 2409a, nor the Administrative Procedure Act, 5 U.S.C. 702, waives the sovereign immunity of the United States in the circumstances presented here, Patchak's suit is barred by sovereign immunity.

A. The Quiet Title Act Prohibits The Relief Sought In This Case

Before the QTA was enacted, suits challenging the government's title to land were barred by principles of sovereign immunity. See *Block*, 461 U.S. at 280-282. In 1972, Congress enacted the QTA to waive sovereign immunity in order to permit the United States to be sued "to adjudicate a disputed title to real property in which the United States claims an interest, other than a security interest or water rights." Act of Oct. 25, 1972, Pub. L. No. 92-562, § 3(a), 86 Stat. 1176 (28 U.S.C. 2409a). But Congress accompanied that waiver of immunity with several important limitations, two of which are particularly relevant here.

First, the QTA states that "[t]his section does not apply to trust or restricted Indian lands." 28 U.S.C.

2409a(a). The statute thereby "retain[s] the United States' immunity from suit by third parties challenging the United States' title to land held in trust for Indians." *United States* v. *Mottaz*, 476 U.S. 834, 842 (1986); see *Block*, 461 U.S. at 283. Second, the QTA makes relief available only to plaintiffs who themselves claim a personal interest in the land at issue: in a QTA proceeding, "[t]he complaint shall set forth with particularity the nature of the right, title, or interest which the plaintiff claims in the real property, [and] the circumstances under which it was acquired." 28 U.S.C. 2409a(d).

This case involves land held by the Secretary in trust for an Indian tribe, and it therefore falls within the QTA's exception for "trust or restricted Indian lands." 28 U.S.C. 2409a(a). Moreover, Patchak does not himself claim any "right, title, or interest" in the land. 28 U.S.C. 2409a(d). Accordingly, the relief that he seeks—an order compelling the Secretary to relinquish trust title to the land—is prohibited by the QTA.

B. Patchak May Not Invoke 5 U.S.C. 702 To Circumvent The Quiet Title Act's Limitations

In the 1976 amendments to the APA, Congress enacted a waiver of the federal government's sovereign immunity from suits seeking judicial review of certain agency action and requesting relief other than money damages. Act of Oct. 21, 1976, Pub. L. No. 94-574, § 1, 90 Stat. 2721 (5 U.S.C. 702). As amended, Section 702 provides that "[a]n action in a court of the United States seeking relief other than money damages and stating a claim that an agency or an officer or employee thereof acted or failed to act in an official capacity or under color of legal authority shall not be dismissed nor relief therein be denied on the ground that it is against the

United States or that the United States is an indispensable party." 5 U.S.C. 702. At the same time, however, Congress was careful to preserve the limitations prescribed in other statutes in which it had waived sovereign immunity for particular classes of cases. To that end, the last sentence of Section 702 provides that "[n]othing herein"—that is, nothing in the APA's waiver of sovereign immunity—"confers authority to grant relief if any other statute that grants consent to suit expressly or impliedly forbids the relief which is sought." *Ibid.*

Although the court of appeals correctly recognized that Patchak's suit may not proceed under the QTA, it nevertheless held that Patchak may invoke the waiver of sovereign immunity set out in Section 702. That conclusion is contrary to the statutory text, the legislative history, and this Court's precedents.

1. Even in the absence of the limitation specified in the last sentence of Section 702, general principles of statutory interpretation would establish that a plaintiff may not rely on the APA to circumvent the specific limitations prescribed in the QTA. This Court has held, "[i]n a variety of contexts," that "a precisely drawn, detailed statute pre-empts more general remedies." *Brown* v. *GSA*, 425 U.S. 820, 834 (1976); accord *EC Term of Years Trust* v. *United States*, 550 U.S. 429, 433 (2007); *Preiser* v. *Rodriguez*, 411 U.S. 475, 488-490 (1973). Most recently, in *Hinck* v. *United States*, 550 U.S. 501 (2007), the Court held that a suit to abate interest on federal taxes could be brought only in the Tax Court under a special provision of the Internal Revenue Code, and not under the Tucker Act, 28 U.S.C. 1491(a)(1). 550 U.S. at 506-507. The Court observed that the Internal Revenue Code provision already "provide[d] a forum for adjudication, a limited class of poten-

tial plaintiffs, a statute of limitations, a standard of review, and authorization for judicial relief." *Id.* at 506; see, *e.g.*, *United States* v. *Erika, Inc.*, 456 U.S. 201, 208 (1982) (holding that Medicare reimbursement disputes are governed by the "precisely drawn provisions" of the Medicare statute rather than the Tucker Act).

Similarly, in *Brown*, the Court held that Section 717 of the Civil Rights Act of 1964, 42 U.S.C. 2000e-16 (1970 & Supp. IV 1974), provides the exclusive remedy for claims of discrimination in federal employment. 425 U.S. at 835. In reaching that conclusion, the Court emphasized that, before Section 717 was enacted, it was doubtful whether any judicial relief would have been available for such claims, and Congress apparently believed that none was. *Id.* at 826-828. For that reason, and taking into account the "balance, completeness, and structural integrity" of Section 717, the Court determined that the provision created an exclusive remedy and was not "designed merely to supplement other putative judicial relief." *Id.* at 832.

The same considerations are present here. Before the QTA was enacted, the United States had not "waive[d] its immunity with respect to suits involving title to land." *Block*, 461 U.S. at 280. Although some plaintiffs had attempted to circumvent the immunity of the United States by suing individual federal officers in disputes over land ownership, "the officer's suit ultimately did not prove to be successful" as a means to bring such claims. *Id.* at 281; see *Malone* v. *Bowdoin*, 369 U.S. 643, 647 (1962). Accordingly, the Congress that enacted the QTA determined that "[b]ecause of the common law doctrine of 'sovereign immunity,' the United States cannot now be sued in a land title action without giving its express consent." S. Rep. No. 575, 92d Cong.,

1st Sess. 1 (1971) (*1971 Senate Report*); see *Brown*, 425 U.S. at 828 ("[T]he relevant inquiry is not whether Congress correctly perceived the then state of the law, but rather what its perception of the state of the law was."). In response, Congress enacted the QTA, including its "carefully crafted" limitations, such as the "Indian lands exception," that were "deemed necessary for the protection of the national public interest." *Block*, 461 U.S. at 284-285. As this Court observed in *Block*, "[i]t would require the suspension of disbelief to ascribe to Congress the design to allow its careful and thorough remedial scheme to be circumvented by artful pleading." *Id.* at 285 (quoting *Brown*, 425 U.S. at 833). That is especially so in light of the principle "that when Congress attaches conditions to legislation waiving the sovereign immunity of the United States, those conditions must be strictly observed, and exceptions thereto are not to be lightly implied." *Id.* at 287. It follows that the QTA displaces the APA's more general waiver of sovereign immunity in cases, such as this one, involving a dispute over the United States' title to land.

2. To the extent there is any doubt about the relationship between the QTA and the APA, the last sentence of Section 702 confirms that a plaintiff may not rely on Section 702 to circumvent the limitations in the QTA: the QTA is an "other statute that grants consent to suit" but "expressly or impliedly forbids the relief which is sought." 5 U.S.C. 702. Indeed, as noted above, the QTA expressly precludes the relief Patchak seeks for two different reasons. First, the QTA "retain[s] the United States' immunity from suit by third parties challenging the United States' title to land held in trust for Indians." *Mottaz*, 476 U.S. at 842; see 28 U.S.C. 2409a(a). Second, the QTA permits challenges to the

United States' claim of title to real property to be brought only by parties who themselves claim an interest in the same property. See 28 U.S.C. 2409a(d). The waiver set out in Section 702 is therefore inapplicable here, and Patchak's suit is barred by sovereign immunity.

3. The legislative history of Section 702 reinforces the conclusion that is compelled by its text. When Congress amended Section 702 in 1976, it adopted a proposal of the Administrative Conference of the United States. H.R. Rep. No. 1656, 94th Cong., 2d Sess. 4, 12, 23-24, 26-28 (1976) (*1976 House Report*); S. Rep. No. 996, 94th Cong., 2d Sess. 3, 12, 22-23, 25-27 (1976) (*1976 Senate Report*). In a memorandum supporting its proposal, the Administrative Conference had pointed out that its "recommendation [was] phrased as not to effect an implied repeal or amendment of any prohibition, limitation, or restriction of review contained in existing statutes * * * in which Congress has conditionally consented to suit." *Sovereign Immunity: Hearing on S. 3568 Before the Subcomm. on Administrative Practice & Procedure of the Senate Comm. on the Judiciary*, 91st Cong., 2d Sess. 138-139 (1970) (*1970 APA Hearing*). The Administrative Conference observed that "this result would probably have been reached by the preservation of all other 'legal or equitable ground[s]' for dismissal," *id.* at 139, in clause (1) of the last sentence of Section 702, which states that "[n]othing herein * * * affects other limitations on judicial review or the power or duty of the court to dismiss any action or deny relief on any other appropriate legal or equitable ground," 5 U.S.C. 702. But the Administrative Conference explained that "clause (2) of the final sentence of part (1) of the recommendation,"— that is, the clause referring to "any other

statute that * * * expressly or impliedly forbids the relief which is sought"—"is intended to prevent any question on this matter from arising." *1970 APA Hearing* 139.

As originally introduced in the Senate, the APA bill varied from the Administrative Conference's proposal in a significant respect: its version of Section 702 would have withheld authority to grant relief only if another statute "forbids the relief which is sought," rather than if it "*expressly or impliedly* forbids the relief which is sought," as the Administrative Conference had proposed. *1976 Senate Report* 12, 26. On behalf of the Department of Justice, then-Assistant Attorney General Scalia urged Congress to restore the phrase "expressly or impliedly." *Id.* at 26-27. As he explained, waiver statutes enacted before 1976 were passed against the background of a system that assumed the existence of a general rule of sovereign immunity, and Congress therefore would have had no occasion "expressly" to forbid relief other than that to which it consented under the particular waiver statute. *Ibid.* Assistant Attorney General Scalia observed that "this will probably mean that in most if not all cases where statutory remedies already exist, these remedies will be exclusive." *Id.* at 27. That result, he concluded, is "simply an accurate reflection of the legislative intent in these particular areas in which the Congress has focused on the issue of relief." *Ibid.*

In response to Assistant Attorney General Scalia's letter, the Senate Committee amended the provision to conform to the Administrative Conference's proposal, *1976 Senate Report* 12, and the bill passed the House of Representatives and the Senate in that form. That history confirms that, under Section 702, "where statutory remedies already exist, these remedies will be exclu-

sive." *Id.* at 27; see *id.* at 12 ("This language makes clear that the committee's intent to preclude other remedies will be followed with respect to *all* statutes which grant consent to suit and prescribe particular remedies.") (emphasis added).

4. This Court has twice held that "Congress intended the QTA to provide the exclusive means by which adverse claimants could challenge the United States' title to real property." *Mottaz*, 476 U.S. at 841 (quoting *Block*, 461 U.S. at 286). And in *Block*, it specifically rejected the suggestion that a plaintiff may invoke the waiver of sovereign immunity in Section 702 as a means of avoiding the limitations on the waiver of sovereign immunity under the QTA. 461 U.S. at 286 n.22. The Court reasoned that the QTA is an "other statute" granting consent to suit within the meaning of 5 U.S.C. 702, so that if a suit is untimely under the QTA's 12-year statute of limitations, 28 U.S.C. 2409a(g), then "the QTA expressly 'forbids the relief' which would be sought under [Section] 702," 461 U.S. at 286 n.22. See *ibid.* (Section 702 "provides no authority to grant relief 'when Congress has dealt in particularity with a claim and [has] intended a specified remedy to be the exclusive remedy.'") (quoting *1976 House Report* 13).

Like *Block*, this case involves a suit that is within the general subject matter addressed by the QTA but is foreclosed by the specific limitations of the QTA. Under *Block*, Patchak cannot evade those limitations by invoking Section 702.

C. Patchak's Lack Of Any Interest In The Bradley Property Is Not A Basis For Permitting Him To Challenge The Government's Trust Title To That Land

The court of appeals noted that "a common feature of quiet title actions is missing from this case" because Patchak does not claim any ownership interest in the land at issue. Pet. App. 14a. From that observation, the court reasoned that "the type of action contemplated in the Quiet Title Act does not encompass Patchak's lawsuit." *Id.* at 16a. In the court's view, this is not "the sort of 'action under this section'"—*i.e.*, the QTA—"for which the United States has waived sovereign immunity except with respect to Indian lands." *Id.* at 12a-13a (quoting 28 U.S.C. 2409a(a)). The court therefore concluded that the QTA is not a statute forbidding relief in these circumstances, and that Section 702 "has waived the government's immunity from suit." *Id.* at 13a. That reasoning is flawed.

1. Section 702's waiver of sovereign immunity is inapplicable because the Quiet Title Act "forbids the relief which is sought" in Patchak's suit

a. The principal error in the court of appeals' analysis is that it focuses on the relief that Patchak does *not* seek—a determination that he owns the Bradley Property—rather than on the relief that he *does* seek, which is to set aside the Secretary's acquisition of the Bradley Property, to prevent the Secretary from holding the Bradley Property as Indian trust land, and thus to divest the United States of its title to the land. See J.A. 38 (asking the district court to "reverse the decision to take the Property into trust for the Gun Lake Band"); Patchak C.A. Br. 26 (describing the relief sought as including an instruction to the district court "to order the

Bradley [Property] taken out of trust"); Pet. App. 1a (characterizing Patchak's suit as one "to prevent the Secretary of the Interior from holding land in trust for an Indian tribe in Michigan"). The QTA's waiver of sovereign immunity allows district courts "to adjudicate a disputed title to real property in which the United States claims an interest." 28 U.S.C. 2409a(a). That is precisely what Patchak has asked the district court to do in this case. His suit necessarily challenges the United States' trust title to the Bradley Property and, if successful, would require the United States to relinquish that title. As explained above, however, the QTA forbids a court from granting such relief, both because the land at issue is Indian trust land and because Patchak himself asserts no interest in it. And because the QTA is a statute that "grants consent to suit" but "forbids the relief which is sought," 5 U.S.C. 702, the APA's waiver of sovereign immunity is not available.

b. The court of appeals relied on the title of the QTA, "An Act to permit suits to adjudicate certain real property quiet title actions," 86 Stat. 1176, and it reasoned that, because a traditional quiet-title action is brought by an adverse claimant to land, the QTA is relevant only to proceedings brought by such a claimant. Pet. App. 13a-15a. But as the court recognized, the title of a statute cannot alter the meaning of its text. *Id.* at 14a; see *Pennsylvania Dep't of Corrs.* v. *Yeskey*, 524 U.S. 206, 212 (1998). Here, the text of the statute refers to the "adjudicat[ion]" of "disputed title[s] to real property in which the United States claims an interest"—exactly what Patchak seeks in this case. 28 U.S.C. 2409a(a).

The court of appeals' reliance on the QTA's title is particularly inappropriate in light of the statute's his-

tory. As enacted, the QTA was closely based on a draft bill proposed by the Department of Justice. The draft referred to "suits to adjudicate disputed titles to lands in which the United States claims an interest," a class of proceedings that unambiguously includes this case. *Suits to Adjudicate Disputed Titles to Land in Which the United States Claims an Interest: Hearing on S. 216 Before the Subcomm. on Administrative Law & Governmental Relations of the House Comm. on the Judiciary*, 92d Cong., 2d Sess. 51 (1972). When the bill was introduced in the Senate, however, that language was changed to the language now in the statute's title: "suits to adjudicate certain real property quiet title actions." *Ibid.* Testifying at a hearing on the bill, the Assistant Attorney General for the Land and Natural Resources Division noted the change but explained that "we do not see any substantive change resulting from the Senate's choice of language or from subsequent changes made solely to insure internal consistency." *Ibid.*; see *id.* at 59 (repeating that statement, without contradiction, in a colloquy with the subcommittee's chairman).

c. More importantly, the court of appeals' reasoning overlooks that the QTA was enacted against the background of a general rule of sovereign immunity. For the reasons explained by Assistant Attorney General Scalia, Congress would have seen no need expressly to forbid all relief to individuals who were not seeking to quiet title in themselves; the general rule of sovereign immunity already prevented those individuals from obtaining relief. *1976 Senate Report* 27. In other words, when Congress considered and enacted the QTA, Congress understood the background law to prevent *anyone* from challenging the United States' title to *any* land, and it

sought to provide adverse claimants, and no others, with an action against the United States in limited circumstances. Yet Congress determined that even adverse claimants were to be barred from bringing suit if their claims involved trust or restricted Indian lands. Thus, at a minimum, the QTA "impliedly" precludes relief in the circumstances of this case, and under 5 U.S.C. 702, the APA's waiver of sovereign immunity is inapplicable.

2. The purposes underlying the Quiet Title Act's "Indian lands" exception are fully applicable to suits such as Patchak's

The court of appeals' analysis also fails to take account of the purposes of the QTA's "Indian lands" exception. That provision reflects not only traditional sovereign-immunity principles as applied to Indian trust lands, see *Minnesota* v. *United States*, 305 U.S. 382, 385-387 (1939), but also a recognition that "Indian title is a matter of federal law and can be extinguished only with federal consent," *Oneida Indian Nation* v. *County of Oneida*, 414 U.S. 661, 670 (1974); see *DeCoteau* v. *District County Court*, 420 U.S. 425, 444 (1975).

Although the initial QTA bill contained no exception for Indian lands, Congress chose to adopt the exception contained in a draft bill submitted by the Department of Justice. *1971 Senate Report* 2; H.R. Rep. No. 1559, 92d Cong., 2d Sess. 4, 10 (1972) (*1972 House Report*). In urging the adoption of that provision, the Solicitor of the Interior observed that the government "has over the years made specific commitments to the Indian people through written treaties and through informal and formal agreements," in exchange for which "Indians * * * have often surrendered claims to vast tracts of land." *Dispute of Titles on Public Lands: Hearing on S. 216*

Before the Subcomm. on Public Lands of the Senate Comm. on Interior & Insular Affairs, 92d Cong., 1st Sess. 19 (1971). "A unilateral waiver of the defense of sovereign immunity as to this land," the Solicitor explained, would "abridge the historic relationship between the Federal Government and the Indians without the consent of the Indians." *Ibid.*; see *1971 Senate Report* 4; *1972 House Report* 13.

The decision below, however, countenances a significant "abridg[ment]" of that relationship. Although Patchak questions whether the Bradley Property *should be* held as Indian trust land, he does not dispute that it *is* so held. Yet the order he seeks in this case would divest the United States of its trust title to that land. The interference with tribal interests from such an order is no less harmful simply because it is issued at the behest of a plaintiff who does not himself claim an interest in the land. Nor is there any reason to believe that, just four years after having carefully protected tribal interests when it enacted the QTA, Congress would have swept those interests aside when it amended the APA.

By permitting suits such as this one to proceed, the court of appeals' interpretation of the APA would severely disrupt the Secretary's acquisition and retention of trust lands for Indians. The Secretary's regulations provide for a 30-day window for the initiation of litigation after the announcement of his intention to take land into trust. 25 C.F.R. 151.12(b); see 61 Fed. Reg. 18,082 (Apr. 24, 1996) (explaining that the purpose of the 30-day window is to "permit[] judicial review before transfer of title to the United States"). The reasoning of the court of appeals, however, would make that time limit meaningless. Instead, any plaintiff who could establish standing but who did not claim to be the landowner

would be able to bring an APA challenge to any trust acquisition within the preceding six years. 28 U.S.C. 2401(a). That would be true whether the land was taken into trust under the Secretary's general authority under the Indian Reorganization Act, 25 U.S.C. 465, or under specific legislation enacted to provide a land base for a particular group of Indians. See, *e.g.*, Graton Rancheria Restoration Act, Pub. L. No. 106-568, Tit. XIV, 114 Stat. 2939 (25 U.S.C. 1300n to 1300n-6). That six-year period of uncertainty as to whether a trust acquisition would be subject to judicial challenge—and hence whether the land would securely be held in trust for the tribe—would pose significant barriers to tribes seeking assurances concerning the status of trust lands and their ability to promote investment and economic development on the lands. The circumvention of the QTA permitted by the court of appeals would therefore frustrate the purpose of trust acquisitions, which is to provide a land base for Indians in order to "encourag[e] tribal self-sufficiency and economic development." *New Mexico* v. *Mescalero Apache Tribe*, 462 U.S. 324, 335 (1983) (internal quotation marks omitted).

Indeed, the uncertainty surrounding the status of trust land arguably would not even end six years after the land is taken into trust. The implication of the court of appeals' reasoning is that, whenever the Secretary takes final agency action with respect to Indian trust land, such as approving a lease, plaintiffs (again, as long as they do not claim to own the land) can bring an APA suit contending that his action was contrary to law because the land is not properly held in trust for Indians. That might even be so when the United States has held the land in trust for years and the tribe has made substantial investments in it. Allowing such never-ending

attacks on the trust status of lands would severely undermine the United States' long-standing recognition of the central importance of tribal sovereignty, self-governance, and economic self-determination.

3. The United States has not waived its sovereign immunity from challenges to its title to land by plaintiffs who are not adverse claimants

Although the court of appeals was correct to observe that Patchak cannot bring an action under the QTA because he does not assert his own interest in the Bradley Property, it drew the wrong conclusion from that observation. Pet. App. 13a-16a; see 28 U.S.C. 2409a(d). In fact, Patchak's lack of interest in the property is another reason why no waiver of sovereign immunity permits this suit.

As explained above, the QTA makes relief available only to a plaintiff who asserts an interest in the land at issue: "The complaint shall set forth with particularity the nature of the right, title, or interest which the plaintiff claims in the real property, [and] the circumstances under which it was acquired." 28 U.S.C. 2409a(d). That limitation is consistent with the QTA's overriding purpose of correcting the inequity formerly suffered by citizens who were "excluded, without benefit of a recourse to the courts, from lands they have reason to believe are rightfully theirs." *1971 Senate Report* 1. In other words, the purpose of the QTA is to subject the United States' claim of title to adjudication by a court where there is a party who has an adverse claim to the same property and who would otherwise suffer the hardship of being unable to remove a cloud on his title to that property. *1976 Senate Report* 7. Without that limitation, the United States would be exposed to numerous

actions by various third parties who might wish to resolve a controversy concerning the United States' claim of title but who lack any competing claim to the same property. Such actions do not present the potential for hardship or concrete adversity regarding a particular parcel that, in Congress's judgment, warranted subjecting the United States to the burdens of suit concerning its title in the specified circumstances.

Moreover, the QTA's limited waiver allowing only plaintiffs asserting an interest in the land to bring suit is closely related to a limitation that addresses what had been "the main objection in the past to waiving sovereign immunity in this area"—namely, the possibility that a successful plaintiff could "force the United States from possession and thereby interfere with the operations of the Government." *1972 House Report* 6. To avoid that possibility, the QTA provides that, if the plaintiff prevails, "the United States nevertheless may retain such possession or control of the real property or of any part thereof as it may elect, upon payment to the person determined to be entitled thereto of an amount which upon such election the district court in the same action shall determine to be just compensation." 28 U.S.C. 2409a(b). As the court of appeals acknowledged, that important protection of the government's possessory interests would make little sense if the suit were brought by someone other than the owner entitled to compensation. Pet. App. 16a. And under the court of appeals' interpretation of the APA, that protection apparently would cease to exist entirely in a case such as this: if Patchak prevailed in this case, the government would be obliged to give up its trust title to the Bradley Property, without the option of paying compensation to the former owner. That former owner is not "entitled" to the property,

28 U.S.C. 2409a(b), in light of its voluntary transfer of it to the United States, and is not a party to this case. As with the "Indian lands" exception, there is no reason to suppose that, in amending the APA in 1976, Congress intended to sweep away the protections it had carefully adopted just four years earlier.

In particular, nothing in Section 702 supports the illogical result of the decision below, under which anyone *except* an adverse claimant is free to challenge the United States' title to trust lands by suing an officer of the United States under the APA. Put another way, the court of appeals' holding leads to the perverse result that a party who claims no interest in the land at issue may sue to bar the United States from holding title to lands in trust for Indians, and to divest the United States of that title, even though the same suit would be barred if brought by a party who claimed an interest in the land. See *Neighbors for Rational Development, Inc.* v. *Norton*, 379 F.3d 956, 962 (10th Cir. 2004) ("If Congress was unwilling to allow a plaintiff claiming title to land to challenge the United States' title to trust land, we think it highly unlikely Congress intended to allow a plaintiff with no claimed property rights to challenge the United States' title to trust land."); *Florida Dep't of Bus. Regulation* v. *United States Dep't of the Interior*, 768 F.2d 1248, 1254-1255 (11th Cir. 1985) ("It would be anomalous to allow others, whose interest might be less than that of an adverse claimant, to divest the sovereign of title to Indian trust lands."), cert. denied, 475 U.S. 1011 (1986).

In that regard, the court of appeals' position would have substantial adverse consequences outside the context of property that the United States claims as Indian trust lands. For example, in *Shawnee Trail Conser-*

vancy v. *United States Department of Agriculture*, 222 F.3d 383, 386-388 (7th Cir. 2000), cert. denied, 531 U.S. 1074 (2001), the plaintiffs alleged that the Forest Service lacked authority to restrict the use of certain roads in a national forest because, they said, the roads were subject to various easements and rights-of-way, and therefore the Forest Service did not "own the property rights necessary to make decisions concerning their incidents of use." *Id.* at 386. Even though the plaintiffs did not themselves claim any interest in those easements or rights of way, the Seventh Circuit correctly held that the QTA barred their suit. In reaching that conclusion, it agreed with "the majority of courts that have considered the QTA in the context of claims that do not seek to quiet title in the party bringing the action," but that "have nonetheless found the Act applicable." *Id.* at 388; see *id.* at 387 (discussing *Metropolitan Water Dist.* v. *United States*, 830 F.2d 139 (9th Cir. 1987), aff'd by an equally divided Court *sub nom. California* v. *United States*, 490 U.S. 920 (1989)).

Under the reasoning of the court of appeals here, however, claims like those brought by the plaintiffs in *Shawnee Trail Conservancy* would be permissible, thereby subjecting the United States to numerous suits to adjudicate its title to real property even though no one in the suit has asserted a competing claim to the same property. Were the United States to lose those suits, it would be forced to cede title to non-parties to the litigation who might have no interest in owning the land. See, *e.g.*, *Southwest Four Wheel Drive Ass'n* v. *BLM*, 363 F.3d 1069, 1071 (10th Cir. 2004) (plaintiffs asserted that "the public" held "title to certain roads on federal land").

Worse still, the court of appeals's reasoning could allow easy circumvention of other limitations of the QTA. For example, suppose that a party claimed an interest in land that had been occupied by the United States for more than 12 years. Such a claim would be barred by the QTA's statute of limitations. See 28 U.S.C. 2409a(g). But the putative owner could grant a cooperative third party a license to engage in some activity on the land that was inconsistent with the federal claim of title. Assuming that the third party obtained a final agency action prohibiting him from engaging in the activity, he could then challenge that action under the APA on the ground that the government did not own the land. Because the third party would not be claiming to own the land himself, the reasoning of the court of appeals would seem to permit that challenge to proceed, even though its effect would be the same as a time-barred action under the QTA. Congress did not intend to permit such ready evasion of the QTA's carefully crafted limitations. Cf. *Block* v. *Community Nutrition Inst.*, 467 U.S. 340, 346-348 (1984).

II. PATCHAK LACKS PRUDENTIAL STANDING

To invoke the jurisdiction of a federal court, a plaintiff must satisfy the "irreducible constitutional minimum of standing" by showing that he has suffered "injury in fact," that the injury is "fairly traceable" to the actions of the defendant, and that the injury will be redressed by a favorable decision. *Lujan* v. *Defenders of Wildlife*, 504 U.S. 555, 560-561 (1992) (brackets, ellipses, and internal quotation marks omitted). In addition, this Court has recognized "judicially self-imposed limits on the exercise of federal jurisdiction," including the requirement that the plaintiff establish prudential standing. *Allen* v.

Wright, 468 U.S. 737, 751 (1984). As relevant here, the doctrine of prudential standing requires a plaintiff to show that "the injury he complains of * * * falls within the 'zone of interests' sought to be protected by the statutory provision whose violation forms the legal basis for his complaint." *Lujan* v. *National Wildlife Fed'n*, 497 U.S. 871, 883 (1990); *Bennett* v. *Spear*, 520 U.S. 154, 175-176 (1997); see 5 U.S.C. 702 (granting a right of review to any person "adversely affected or aggrieved by agency action within the meaning of a relevant statute"). Under that test, Patchak lacks standing to maintain this suit.

A. Patchak's Alleged Injuries Are Unrelated To The Interests Protected Or Regulated By Section 5 Of The IRA

1. In this case, "the statutory provision whose [alleged] violation forms the legal basis for [Patchak's] complaint," *National Wildlife Fed'n*, 497 U.S. at 883, is Section 5 of the Indian Reorganization Act, 25 U.S.C. 465, which authorizes the Secretary to acquire interests in land "for the purpose of providing land for Indians." See J.A. 37-38 (citing the IRA as the basis for Patchak's complaint). According to Patchak, the Band was not "under Federal jurisdiction," 25 U.S.C. 479, when the IRA was enacted in 1934, so 25 U.S.C. 465 does not authorize the Secretary to acquire land in trust for it. J.A. 37; see *Carcieri* v. *Salazar*, 555 U.S. 379 (2009). But neither Patchak nor the court of appeals has suggested that the "interests to be protected or regulated" by that provision, *Bennett*, 520 U.S. at 175 (quoting *Association of Data Processing Serv. Orgs.* v. *Camp*, 397 U.S. 150, 153 (1970)), have anything to do with the interests asserted in Patchak's suit—avoiding diminished property values, loss of "the rural character of the area," and loss

of "the enjoyment of the agricultural land" near the site on which the Band has built a gaming facility. Pet. App. 10a; see J.A. 30 (alleging that Patchak will be "injured by the negative effects of building and operating a massive casino in his community"). In fact, the provision allowing the Secretary to take land into trust only for tribes then "under Federal jurisdiction" was a limitation on the obligation of the federal government to provide for tribes and individual Indians, not a limitation designed to benefit surrounding communities or individual non-Indians. See *To Grant to Indians Living Under Federal Tutelage the Freedom to Organize for Purposes of Local Self-Government & Economic Enterprise: Hearings on S. 2755 Before the Senate Comm. on Indian Affairs*, 73d Cong., 2d Sess., Pt. 2, at 265-266 (1934) (*IRA Hearing*). It follows that Patchak lacks prudential standing to maintain this suit.

2. Of course, that an individual such as Patchak lacks standing does not mean that there is no entity that could challenge a decision by the Secretary to acquire land in trust for Indians. Section 5 of the IRA provides that "[t]itle to any lands or rights acquired pursuant to this Act * * * shall be taken in the name of the United States in trust for the Indian tribe or individual Indian for which the land is acquired, and such lands or rights shall be exempt from State and local taxation." 25 U.S.C. 465. One of the purposes of conferring that authority on the Secretary was to aid in providing a land base to Indians over which they might exercise self-government. See *IRA Hearing* Pt. 1, at 26 ("[T]his bill is designed * * * to provide for those Indians unwilling or unable to compete in the white world some measure of self-government in their own affairs."); *Michigan Gambling Opposition* v. *Kempthorne*, 525 F.3d 23,

31 (D.C. Cir. 2008) ("Our review of the purpose and structure of the IRA confirms that * * * the Secretary is to exercise his powers in order to further economic development and self-governance among the Tribes."), cert. denied, 555 U.S. 1137 (2009). In this context, therefore, State and local governments could be said to be arguably within the zone of interests protected or regulated by 25 U.S.C. 465 because they stand to lose taxing authority and some regulatory authority as a result of the Secretary's trust acquisition. See *Nevada* v. *Hicks*, 533 U.S. 353, 361-362 (2001).

Significantly, the State of Michigan has not sued to oppose the trust acquisition here. To the contrary, it has entered into a gaming compact with the Band. 74 Fed. Reg. 18,397 (Apr. 22, 2009). Similarly, Allegan County and Wayland Township (where the property is located) have actively supported the trust acquisition and the Band's economic-development efforts. See Wayland Township, et al., Cert.-Stage Amicus Br. 1-3. Unlike the interests of those governmental entities, however, Patchak's interests are "so marginally related to or inconsistent with the purposes implicit in the statute that it cannot reasonably be assumed that Congress intended to permit the suit." *Clarke* v. *Securities Indus. Ass'n*, 479 U.S. 388, 399 (1987). He should not be permitted to nullify the decision by the State and the local governments to support the Secretary's action.

B. The Court Of Appeals Erred In Analyzing The Interests Protected By Provisions Other Than The Statutory Provision Relied On By Patchak

This Court made clear in *National Wildlife Federation* that the zone-of-interests analysis is limited to the particular "statutory provision whose violation forms the

legal basis for [the] complaint." 497 U.S. at 883. Here, that provision is 25 U.S.C. 465, so the court of appeals should have focused its inquiry on that provision. Instead, the court erred by examining the interests protected by a separate statute and by regulations adopted by the Secretary.

1. Under *National Wildlife Federation*, it would have been inappropriate for the court to consider the interests protected even by other provisions of the IRA itself, outside of the one invoked by Patchak. As this Court explained in *Bennett*, "[w]hether a plaintiff's interest is 'arguably . . . protected . . . by the statute' within the meaning of the zone-of-interests test is to be determined not by reference to the overall purpose of the Act in question * * * but by reference to the particular provision of law upon which the plaintiff relies." 520 U.S. at 175-176. In any event, Patchak's interests do not even fall within the purposes of the IRA when the statute's other provisions are considered. The IRA repudiated the previous land policies of the Indian General Allotment Act, ch. 119, 24 Stat. 388, in that it prohibited any further allotment of reservation lands, 25 U.S.C. 461; extended indefinitely the periods of trust or restrictions on alienation of Indian lands, 25 U.S.C. 462; provided for the restoration of surplus unallotted lands to tribal ownership, 25 U.S.C. 463; and prohibited any transfer of Indian lands (other than to the tribe or by inheritance), except exchanges authorized by the Secretary as "beneficial for or compatible with the proper consolidation of Indian lands and for the benefit of cooperative organizations," 25 U.S.C. 464. The IRA's "overriding purpose" was to "establish machinery whereby Indian tribes would be able to assume a greater degree of self-government, both politically and economically."

Morton v. *Mancari*, 417 U.S. 535, 542 (1974). Neither Patchak nor the court of appeals has identified any relationship between any of those interests and the injuries Patchak asserts.

2. What the court of appeals actually did in this case was even less justified than looking to other provisions of the IRA: the court evaluated what interests are protected by the Indian Gaming Regulatory Act, 25 U.S.C. 2701 *et seq.*, an entirely different statute enacted in 1988, some 54 years after the IRA. Pet. App. 8a. The court of appeals attempted to justify its reliance on IGRA by asserting that the IRA's provisions are "linked" to those of IGRA, but that reasoning cannot withstand scrutiny. *Ibid.* It is true that the IRA and IGRA may be considered "linked" in the sense that one way for a tribe to operate a gaming facility (permitted by IGRA) is if the facility is located on land held in trust by the United States for the tribe (and acquired under the IRA or some other statute or treaty). But land may be taken into trust for a host of purposes that have nothing at all to do with gaming, as evidenced by the existence of 25 U.S.C. 465 and the Secretary's taking of land into trust under it for many years before IGRA was enacted. And even as to gaming, the presence of trust land is neither a necessary nor a sufficient condition for gaming to occur, because a tribe may conduct gaming on other lands, such as lands within an Indian reservation and restricted fee land, 25 U.S.C. 2703(4), and also because there are additional provisions of IGRA that must be satisfied before a tribe can operate a gaming facility.

More to the point, whatever incidental role the IRA's limitations may happen to play today with respect to "the interests of those * * * who would suffer from living near a gambling operation," Pet. App. 7a, there is

no reason to suppose that Congress could even have imagined those interests, let alone actually sought to protect them, when it enacted the IRA in 1934. There is accordingly no basis for concluding that those interests are even arguably "within the 'zone of interests' sought to be protected" by 25 U.S.C. 465. *National Wildlife Fed'n* 497 U.S. at 883.

Of course, where the Secretary has determined that land is eligible for gaming, an entity with Article III and prudential standing to challenge gaming on that land may bring a claim alleging that the determination violates IGRA. Indeed, MichGO brought just such a challenge, but it chose to abandon its IGRA claim on appeal. *Michigan Gambling Opposition*, 525 F.3d at 28. Should Patchak be able to identify some final agency action that he believes violates IGRA, he too could bring a claim alleging that IGRA was violated, if he establishes standing. His current suit, however, does not challenge the Bradley Property's eligibility for gaming under IGRA. His challenge based on the "under Federal jurisdiction" language in the IRA instead alleges that the Secretary could not acquire the Bradley Property in trust for the Band for any purpose.

3. To support its reliance on the purposes of IGRA, the court of appeals cited *Air Courier Conference* v. *American Postal Workers Union, AFL-CIO*, 498 U.S. 517 (1991), but the court of appeals' analysis cannot be reconciled with this Court's decision in that case. Pet. App. 8a. In *Air Courier Conference*, postal-employee unions sought to challenge a regulation suspending restrictions in private-express statutes, which regulate the conduct of the Postal Service's competitors. 498 U.S. at 519-520. The unions argued that the suspension would harm their members' employment opportunities, and

they suggested that, in identifying the relevant zone of interests, the Court should look beyond the private-express statutes themselves to consider the broader Postal Reorganization Act (PRA), Pub. L. No. 91-375, 84 Stat. 719, which codified those statutes. 498 U.S. at 528.

This Court rejected that suggestion. In so doing, the Court acknowledged that it had sometimes looked beyond the particular statutory provision invoked by a plaintiff to related provisions within the same statute. *Air Courier Conference*, 498 U.S. at 529. But the Court explained that "the only relationship between the [private-express statutes], upon which the Unions rel[ied] for their claim on the merits, and the labor-management provisions of the PRA, upon which the Unions rel[ied] for their standing, [was] that both were included in the general codification of postal statutes embraced in the PRA." *Ibid.* To accept the unions' argument, the Court observed, would require holding that the PRA was the relevant statute for prudential standing, "with all of its various provisions united only by the fact that they dealt with the Postal Service." *Ibid.* The Court refused to apply that "level of generality" in conducting its prudential-standing analysis; to do so, it concluded, would "deprive the zone-of-interests test of virtually all meaning." *Id.* at 529-530.

Thus, far from supporting the decision below, *Air Courier Conference* confirms that, under this Court's precedents, there is no basis for the court of appeals' conclusion that the zone of interests arguably sought to be protected by the Congress that passed the IRA in 1934 encompasses interests reflected in a statute passed more than a half-century later. Just like the unions' argument that this Court rejected in *Air Courier Conference*, the court of appeals' theory here is that the IRA

and IGRA are related because they both deal with Indians and Indian tribes. That does not provide a basis for prudential standing.

4. Similarly without merit is the court of appeals' resort to the Secretary's regulations as a basis for holding that Patchak has standing. Pet. App. 8a-9a (citing 25 C.F.R. 151.10, 151.12). Those regulations prescribe procedures the Secretary has chosen to follow, and factors he has elected to take into account, when deciding whether to take land into trust for a tribe; the factors include "[j]urisdictional problems and potential conflicts of land use." 25 C.F.R. 151.10(f). But Patchak does not allege that the regulations were violated here, nor does he seek to enforce them in this case. Instead, his complaint is based solely on the IRA. J.A. 37-38. That the Secretary has made a discretionary decision to take potential conflicts of land use into account when determining whether to take land into trust for Indians does not mean that Congress intended to protect the interests of private landowners in the vicinity when it enacted 25 U.S.C. 465 itself.

C. The Court Of Appeals Erroneously Conflated Article III And Prudential Standing

The court of appeals further erred by conflating Article III and prudential standing principles. The court correctly observed that a State has prudential standing to bring a suit alleging a violation of 25 U.S.C. 465 because the limitations prescribed in the IRA serve to protect a State's interest in its regulatory authority over the land and tax revenues associated with the land. Pet. App. 9a-10a. According to the court, while "the nature" of a State's and Patchak's alleged injuries "may be different," Patchak's injuries "are just as cognizable." *Id.*

at 10a. But the court's reliance on "cognizable injury" misapplies an Article III standing requirement to the prudential standing issue presented here. While alleging a "cognizable injury" is a requirement of Article III standing, see *Vermont Agency of Natural Res.* v. *United States ex rel. Stevens*, 529 U.S. 765, 773 (2000), that an injury is cognizable for that purpose does not also establish that it falls within the zone of interests intended to be protected by the statutory provision giving rise to the claim, see *Clarke*, 479 U.S. at 395-396 (explaining that the prudential-standing requirement under the zone-of-interests test "add[s] to the requirement" that a plaintiff suffer an injury in fact).

For similar reasons, the court erred in relying on *Sierra Club* v. *Morton*, 405 U.S. 727 (1972), for the proposition that the "sorts of injuries [Patchak asserts] have long been considered sufficient for purposes of standing." Pet. App. 10a. In *Sierra Club*, the Court considered whether the plaintiffs had satisfied the injury-in-fact requirement for standing under Article III, and it ultimately concluded that they had not. 405 U.S. at 734-740. Nothing in the Court's opinion addressed prudential standing, which is independent of Article III.

CONCLUSION

The judgment of the court of appeals should be reversed.

Respectfully submitted.

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APPENDIX

1. 5 U.S.C. 702 provides:

Right of review

A person suffering legal wrong because of agency action, or adversely affected or aggrieved by agency action within the meaning of a relevant statute, is entitled to judicial review thereof. An action in a court of the United States seeking relief other than money damages and stating a claim that an agency or an officer or employee thereof acted or failed to act in an official capacity or under color of legal authority shall not be dismissed nor relief therein be denied on the ground that it is against the United States or that the United States is an indispensable party. The United States may be named as a defendant in any such action, and a judgment or decree may be entered against the United States: *Provided*, That any mandatory or injunctive decree shall specify the Federal officer or officers (by name or by title), and their successors in office, personally responsible for compliance. Nothing herein (1) affects other limitations on judicial review or the power or duty of the court to dismiss any action or deny relief on any other appropriate legal or equitable ground; or (2) confers authority to grant relief if any other statute that grants consent to suit expressly or impliedly forbids the relief which is sought.

2. 25 U.S.C. 465 provides:

Acquisition of lands, water rights or surface rights; appropriation; title to lands; tax exemption

The Secretary of the Interior is authorized, in his discretion, to acquire, through purchase, relinquishment, gift, exchange, or assignment, any interest in lands, water rights, or surface rights to lands, within or without existing reservations, including trust or otherwise restricted allotments, whether the allottee be living or deceased, for the purpose of providing land for Indians.

For the acquisition of such lands, interests in lands, water rights, and surface rights, and for expenses incident to such acquisition, there is authorized to be appropriated, out of any funds in the Treasury not otherwise appropriated, a sum not to exceed $2,000,000 in any one fiscal year: *Provided*, That no part of such funds shall be used to acquire additional land outside of the exterior boundaries of Navajo Indian Reservation for the Navajo Indians in Arizona, nor in New Mexico, in the event that legislation to define the exterior boundaries of the Navajo Indian Reservation in New Mexico, and for other purposes, or similar legislation, becomes law.

The unexpended balances of any appropriations made pursuant to this section shall remain available until expended.

Title to any lands or rights acquired pursuant to this Act or the Act of July 28, 1955 (69 Stat. 392), as amended (25 U.S.C. 608 et seq.) shall be taken in the name of the United States in trust for the Indian tribe or individual Indian for which the land is acquired, and such lands or rights shall be exempt from State and local taxation.

3. 28 U.S.C. 2409a provides:

Real property quiet title actions

(a) The United States may be named as a party defendant in a civil action under this section to adjudicate a disputed title to real property in which the United States claims an interest, other than a security interest or water rights. This section does not apply to trust or restricted Indian lands, nor does it apply to or affect actions which may be or could have been brought under sections 1346, 1347, 1491, or 2410 of this title, sections 7424, 7425, or 7426 of the Internal Revenue Code of 1986, as amended (26 U.S.C. 7424, 7425, and 7426), or section 208 of the Act of July 10, 1952 (43 U.S.C. 666).

(b) The United States shall not be disturbed in possession or control of any real property involved in any action under this section pending a final judgment or decree, the conclusion of any appeal therefrom, and sixty days; and if the final determination shall be adverse to the United States, the United States nevertheless may retain such possession or control of the real property or of any part thereof as it may elect, upon payment to the person determined to be entitled thereto of an amount which upon such election the district court in the same action shall determine to be just compensation for such possession or control.

(c) No preliminary injunction shall issue in any action brought under this section.

(d) The complaint shall set forth with particularity the nature of the right, title, or interest which the plaintiff claims in the real property, the circumstances under which it was acquired, and the right, title, or interest claimed by the United States.

(e) If the United States disclaims all interest in the real property or interest therein adverse to the plaintiff at any time prior to the actual commencement of the trial, which disclaimer is confirmed by order of the court, the jurisdiction of the district court shall cease unless it has jurisdiction of the civil action or suit on ground other than and independent of the authority conferred by section 1346(f) of this title.

(f) A civil action against the United States under this section shall be tried by the court without a jury.

(g) Any civil action under this section, except for an action brought by a State, shall be barred unless it is commenced within twelve years of the date upon which it accrued. Such action shall be deemed to have accrued on the date the plaintiff or his predecessor in interest knew or should have known of the claim of the United States.

(h) No civil action may be maintained under this section by a State with respect to defense facilities (including land) of the United States so long as the lands at issue are being used or required by the United States for national defense purposes as determined by the head of the Federal agency with jurisdiction over the lands involved, if it is determined that the State action was brought more than twelve years after the State knew or should have known of the claims of the United States. Upon cessation of such use or requirement, the State may dispute title to such lands pursuant to the provisions of this section. The decision of the head of the Federal agency is not subject to judicial review.

(i) Any civil action brought by a State under this section with respect to lands, other than tide or submerged lands, on which the United States or its lessee

or right-of-way or easement grantee has made substantial improvements or substantial investments or on which the United States has conducted substantial activities pursuant to a management plan such as range improvement, timber harvest, tree planting, mineral activities, farming, wildlife habitat improvement, or other similar activities, shall be barred unless the action is commenced within twelve years after the date the State received notice of the Federal claims to the lands.

(j) If a final determination in an action brought by a State under this section involving submerged or tide lands on which the United States or its lessee or right-of-way or easement grantee has made substantial improvements or substantial investments is adverse to the United States and it is determined that the State's action was brought more than twelve years after the State received notice of the Federal claim to the lands, the State shall take title to the lands subject to any existing lease, easement, or right-of-way. Any compensation due with respect to such lease, easement, or right-of-way shall be determined under existing law.

(k) Notice for the purposes of the accrual of an action brought by a State under this section shall be—

(1) by public communications with respect to the claimed lands which are sufficiently specific as to be reasonably calculated to put the claimant on notice of the Federal claim to the lands, or

(2) by the use, occupancy, or improvement of the claimed lands which, in the circumstances, is open and notorious.

(*l*) For purposes of this section, the term "tide or submerged lands" means "lands beneath navigable wa-

ters" as defined in section 2 of the Submerged Lands Act (43 U.S.C. 1301).

(m) Not less than one hundred and eighty days before bringing any action under this section, a State shall notify the head of the Federal agency with jurisdiction over the lands in question of the State's intention to file suit, the basis therefor, and a description of the lands included in the suit.

(n) Nothing in this section shall be construed to permit suits against the United States based upon adverse possession.